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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/663,618 06/14/96 GRAY

P 27866/32960

HM11/0313

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EXAMINER

PROLITY, R	ART UNIT	PAPER NUMBER
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1652

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DATE MAILED:

03/13/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. <b>08/663,618</b>	Applicant(s) <b>Gray</b>
	Examiner <b>Rebecca Prouty</b>	Group Art Unit <b>1652</b>

Responsive to communication(s) filed on Dec 12, 1997

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-18 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-18 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Claims 19-31 have been canceled. Claims 1-18 are still at issue and are present for examination.

Applicants' arguments filed on 12-12-97, paper No. 10, have been fully considered and are deemed to be persuasive to overcome some of the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, and 13-18 are rejected under 35 U.S.C. 102(a) as being anticipated by Boot et al. The rejection is explained in the previous Office Action.

The declaration filed on 12-12-97 under 37 CFR 1.131 has been considered but is ineffective to overcome the Boot et al. reference.

The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA country prior to the effective date of the Boot et al. reference. The examiner fails to see any evidence on the notebook page submitted as Exhibit 1 that establishes that a plasmid named MO218 was obtained. As best can be discerned, this page nowhere

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even shows the designation M0218, much less shows that this designation corresponds to a plasmid encoding the claimed human chitinase gene. It should be noted that much of the notebook page submitted is difficult to read due to a poor photocopy. In particular the table in the upper left hand corner, with the exception of some of the numbers in the first three columns, is completely illegible as well as all the information under the title DNA Sequencing Request in the upper right corner.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 7-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Boot et al. The rejection is explained in the previous Office Action.

Applicant has not presented any arguments specifically traversing this rejection but instead relies upon the traversal discussed above. Therefore, this rejection is maintained for the reasons presented above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

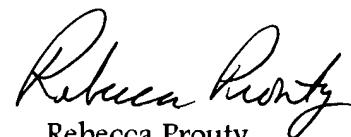
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rebecca Prouty, Ph.D. whose telephone number is (703) 308-4000. The examiner can normally be reached on Monday-Friday from 8:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert A. Wax, can be reached at (703) 308-4216. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Rebecca Prouty  
Primary Examiner  
Art Unit 1652